



**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE BOARD OF HEALTH**

Town of Arlington

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Regulations Prohibiting Smoking in Workplaces and Public Places

SECTION 1: PURPOSE

The purpose of this regulation is to protect the health of the employees and general public in the Town of Arlington

SECTION 2: AUTHORITY

This regulation is promulgated under the authority granted to the Arlington Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that "[b]oards of health may make reasonable health regulations. It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that "[n]othing in this Section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this Section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth."

SECTION 3: DEFINITIONS

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

Compensation: money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

E-Cigarette: Any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary

employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimus* amount of time.

Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of Arlington.

Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

Food service establishment: including restaurants means a place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes such places regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food.

Municipal Building: Any building or facility owned, operated, leased or occupied by the Town of Arlington.

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Public place: an enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: atriums, auditoriums, automatic teller machines, automatic repair and maintenance establishments, bars; common areas of any housing structure with four or more dwelling units, entrance ways, food service establishments; gasoline stations, licensed childcare locations including childcare in homes; educational facilities including classrooms and private schools; elevators accessible to the public; clinics, hospitals, rest homes and nursing homes; retirement homes and common areas of any federal, state or locally subsidized housing complex; locations where health care is provided; medical facilities; mobile food units; restrooms open to the public; retail stores; retail food stores; restaurants; game arcades; sports arenas; hair cutting and cosmetology establishments; kiosks; Laundromats; libraries; municipal buildings; theaters; concert halls; public transit facilities; workplaces; and any clubs, rooms or halls when used for public meetings. A room or hall used for a private social function in which the sponsor of the function has control over the seating arrangements or other use of the hall shall not be construed as a public place.

Restaurant: any establishment serving food for consumption on the premises. This includes cafeterias and cafeterias in the workplace.

Retail tobacco store: an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely

incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Arlington Board of Health.

Smoking (or smoke): the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Smoking bar: an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Workplace: an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

SECTION 4: SMOKING PROHIBITED

No person shall smoke in any public place

- (a) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.
- (b) Smoking is hereby prohibited in the Town Arlington in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law).
- (c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
 - a. Restaurant and Food Service Establishments. The prohibition on smoking in public places shall apply to all food service establishments including restaurants. This prohibition includes all outdoor seating and take out food service establishments.
 - b. Public Transit Facilities. The prohibition on smoking in public places shall apply to public and private transportation facilities and vehicles providing service to the public free of charge or for a fee including ambulances, buses, taxis and other means of public mass transit while operation within the boundaries of the Town of Arlington.

- c. Retail Food Stores and Retail Stores. The prohibition on smoking in public places shall apply to retail food stores and retail stores.
- d. Retail Tobacco Stores and Smoking Bars. The prohibition on smoking in public places shall apply to retail tobacco stores and smoking bars.
- e. Schools. It shall be unlawful for any person, including all teaching and non-teaching personnel to smoke in any public or private school, on school grounds or school buses at any time.
- f. Municipal Buildings, Childcare Facilities, Health Care Facilities. No person shall smoke in the area within 15 feet of an entranceway accessible to the public at any municipal building, childcare facility or health care institution, except that this shall not apply to a smoker transiting through such fifteen foot area.
- g. Town-owned parks, playgrounds, beaches, swimming areas and non-school athletic fields. The prohibition on smoking in public places shall apply to Town-owned parks, playgrounds, beaches, swimming areas and non-school athletic fields.
- h. The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

SECTION 5: ENFORCEMENT

- (1) An owner, manager, or other person in control of a building, vehicle or vessel who violates Section 4, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:
 - a. \$100 for the first violation;
 - b. \$200 for a second violation occurring within two (2) years of the date of the first offense; and
 - c. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- (2) Each calendar day on which a violation occurs shall be considered a separate offense.
- (3) This regulation shall be enforced by the Board of Health and its designees.
- (4) Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.

(5) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.

(6) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.

(7) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

SECTION 6: SEVERABILITY

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Section 4 of this regulation nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

SECTION 8: EFFECTIVE DATE

This regulation shall be effective as of January 1, 2014.

Arlington Board of Health

Michael Fitzpatrick, DMD, Chair

Marie Walsh-Condon, MD

Mr. Kenneth Kohlberg, JD, MPH